DRUG POLICY ALLIANCE

Reason. Compassion. Justice.

Proposition 36: Looking Back and Beyond

Drug Policy Alliance Report to the Little Hoover Commission
June 11, 2007

The Drug Policy Alliance and Proposition 36

The Drug Policy Alliance is the nation's leading organization working to end the war on drugs. Nearly half a million people in the United States are behind bars for drug law violations. That's more people than Western Europe, with a bigger population, incarcerates for all offenses. The war on drugs has become a war on families, a war on health, and a war on our constitutional rights. We deserve better. We at the Drug Policy Alliance envision a just society in which people are no longer punished for what they put into their own bodies, but only for crimes committed against others, and in which the fears, prejudices and punitive prohibitions of today are no more. DPA promotes realistic alternatives based on science, compassion, health and human rights. DPA helped write and pass Proposition 36 and has advocated for its faithful implementation according to the will of the voters who approved the law. Protecting and expanding Prop.36 is a top priority of DPA.

I. Introduction

California's landmark treatment-instead-of-incarceration law, Proposition 36, is the nation's most significant voter rejection of the harms perpetrated by the war on drugs, and the largest sentencing reform since the end of alcohol Prohibition in 1933. Passed by 61 percent of voters in 2000, the initiative has enrolled more than 200,000 people in state-funded, community-based addiction treatment and probation as an alternative to conventional criminal justice sentencing and incarceration.[1] Prop. 36 is also the only legislative reform to California's Three Strikes law, providing drug treatment instead of 25-to-life prison sentences to certain "3rd strikers" who commit felony drug possession offenses, and who are not a threat to public safety.

Prop. 36 guides over 36,000 people into treatment each year. By 2006, roughly one in every 200 state residents will have been eligible to receive Prop. 36 services.[2] Over one-half of the people who receive Prop. 36 treatment suffer from methamphetamine abuse, and they are succeeding in Prop. 36 treatment at above average rates.[3] The law has been shown to save taxpayers between $2.50 and $4 for every $1 invested in the program.[4] In its first six years, Prop. 36 has saved taxpayers nearly $1.8 billion and graduated more than 70,000 people.[5] Prop. 36 graduates include small business owners, nurses, mechanics, alcohol and drug counselors, and Hollywood actors. Many are also parents.

In 2003, the Little Hoover Commission ("the Commission") conducted an extensive review of California's alcohol and drug prevention and treatment efforts—*For Our Health & Safety: Joining Forces to Defeat Addiction*. Prop. 36 was just two years old and limited data was available for analysis. Nevertheless, it was already clear that Prop. 36 signified a dramatic shift from an enforcement-first to a treatment-first approach to drug use and addiction.

As the Commission noted in its 2003 report, "There is a growing sentiment among Americans that arresting and incarcerating nonviolent drug users is an ineffective and costly way to control drugs. Californians expressed those concerns by passing Proposition 36…. Some polls show that more people support legalization than believe an enforcement-based war on drugs will succeed."[6]

By 2007, thanks to data collected and analyzed pursuant to the initiative's research requirements, we now have ample evidence by which to measure the law's success. Prop. 36 data, collected by the state and analyzed by state-contracted researchers at the

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[1] All statistics relating to number of offenders offered treatment, choosing treatment, and graduating from treatment are culled from UCLA's four definitive reports to date spanning 2001-2005. The numbers are explained thoroughly within each report but for summaries, you may refer to: 2002 UCLA report pg. 11; 2003 UCLA report pg. 28; 2004 UCLA report pg. iii, and 2005 Report pg. 3. Henceforth cited as "Compiled UCLA data."

[2] Compiled UCLA data.

[3] University Of California Los Angeles, Integrated Substance Abuse Programs, *Evaluation of the Substance Abuse and Crime Prevention Act, Final Report*, April 13, 2007, pp. 3, 12, 22-23.

[4] UCLA, April 13, 2007, p. 6.

[5] Compiled UCLA data.

[6] Little Hoover Commission, *For Our Health & Safety: Joining Forces to Defeat Addiction,* March 2003, p. 30.

University of California at Los Angeles, confirm that the voters got what they sought: an effective and affordable approach to the public health and public safety problems of addiction.

But the data also show that the initiative and efforts to implement it do not go far enough. A serious shortfall in funding for treatment as well as a lack of state and county commitment to evidence-based treatments, such as narcotic replacement therapies, diminish the duration, diversity, and quality of treatment provided. Moreover, beyond Prop. 36, there are still thousands of people in the criminal justice system and in the wider population who lack access to treatment.

As the Commission reported in 2003, "Proposition 36, it turns out, is more than a shift in the popular wind. It is an enormous opportunity for local and state agencies that really do share a common goal to coordinate their efforts to change lives and improve public safety. If successful, the implementation of Proposition 36 will not only demonstrate the government's faithful response to the public will, but it will document how treatment can be an effective defense against the costly consequences we now endure."[7]

The Drug Policy Alliance ("DPA") authored the initiative, spearheaded the campaign to pass it and continues to fight to protect the law's (and the voters') core commitment to community-based treatment. DPA welcomes the opportunity to share with the Commission the enormous positive impact of this initiative as well as how the law could be bolstered and expanded to bring the benefits of treatment to more Californians and their families.

II. Measures of Success

When 61 percent of California voters approved Proposition 36, they signaled a sea change in how the public views addiction and criminal justice. Seven years later, the law's commitment to and funding of data collection and research on the program it designed has yielded the largest data set of its kind, demonstrating the efficacy of treatment-versus-incarceration policies.

As the Commission observed in 2003, "Without data, decisions are more likely to be guided by opinion and ideology than knowledge and performance."[8]

In addition, the more qualitative evidence—suffering foregone, lives saved, families reunited and generational cycles of addiction and incarceration broken—suggests that Prop. 36 has improved the lives and prospects for hundreds of thousands of children and families in California.

[7] Little Hoover Commission, March 2003, p iii.
[8] Little Hoover Commission, March 2003, p 36.

Below are the law's quantifiable measures of success. Since Prop. 36 took effect:

- Drug treatment funding in California nearly doubled under Prop. 36,[9] and the number of licensed programs has grown by 66 percent;[10]
- Approximately 36,000 people per year have enrolled in drug treatment programs through Prop. 36, with over half receiving treatment for methamphetamine;
- About one-third of those who enter treatment each year, or about 12,000 people, complete treatment, and another seven percent make "satisfactory progress";[11]
- In six years, more than 70,000 people have completed the program, many of whom have reunited with family, gone back to work and school, and are paying their taxes;
- Hundreds of thousands of children have benefited, and many once in foster care have been reunited with their parents;
- The number of people incarcerated for drug possession dropped by 6,279, or 32 percent, in five years, with the number of incarcerated women dropping an even greater extent;[12]
- The state has accrued net savings between $1.2 billion and $1.8 billion.

Infusion of funding. The initiative provided start up funding of $60 million and funding of $120 million each year for the first five years of the program. This nearly doubled overnight the amount of money California spent on treatment. Although NIMBYism kept many new treatment facilities from being built, the new funds did result in a significant expansion of existing programs and also helped encourage a two-thirds increase in the number of licensed programs.

Treatment admissions. By keeping tens of thousands of nonviolent drug offenders out of California's overcrowded jails and prisons each year, Prop. 36 successfully targeted limited resources toward a high-cost population—in particular, "Clients whose substance abuse… increases the burden on other public programs such as foster care and corrections"—an approach the Commission recommended in its 2003 report.[13] Thus, Prop. 36 reached a population that was not only in need of treatment, but one that would maximize the potential for cost-savings.

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[9] Drug Policy Alliance, *Proposition 36: Improving Lives, Delivering Results: A Review of the First Four Years of California's Substance Abuse and Crime Prevention Act of 2000*, March 2006, p. 11.
[10] California Department of Alcohol and Drug Programs, *Substance Abuse and Crime Prevention Act (Proposition 36)*: Fourth Annual report to the Legislature, p. 11.
[11] University of California Los Angeles, Integrated Substance Abuse Programs, *Evaluation of the Substance Abuse and Crime Prevention Act: 2004 Report*, July 22, 2005, p. 36.
[12] Drug Policy Alliance, March 2006, p. 9, based on data from California Department of Corrections and Rehabilitation, Data Analysis Unit, "Prison Census Data," June 2000-June 2005.
[13] Little Hoover Commission, March 2003, p 52.

Half of Prop. 36 participants have been using drugs for over a decade and half had never before accessed treatment.[14] Prop. 36 therefore not only increased treatment admissions among a particularly high-cost drug using population, it successfully targeted a population that earlier programs had failed to reach.

On average, about 36,000 people enroll in treatment each year under Prop. 36. This number is slightly more than the Legislative Analyst's Office had anticipated prior to the law's passing.

Roughly 20,000 of Prop. 36 clients each year receive treatment for methamphetamine, making Prop. 36 *the world's largest methamphetamine treatment program*—and perhaps its most successful.[15] In six just years, more than 100,000 Californians who suffer addiction to methamphetamine have received treatment under Prop. 36, and about 36,000 have completed their mandated course of treatment. Moreover, methamphetamine users as a group have exceeded Prop. 36's statewide average treatment completion rate each year.

As the Commission noted in 2003, "Treatment is effective in all stages of epidemics and the most successful tactic as epidemics mature. Most of the substances abused in California—alcohol, cocaine, marijuana, methamphetamine—are at the epidemic stage, where the benefit of enforcement is limited and treatment is essential to reducing the negative consequences."[16] Prop. 36 provides treatment instead of incarceration to abusers of each of these drugs.

Predictably positive outcomes. UCLA has reported that, averaged across the state's 58 counties, between 32-34 percent of the people who enter treatment under Prop. 36, or 12,000 people, complete it each year. Taken by county, there is greater variance in completion rates. According to UCLA, "In each of SACPA's first three years, completion rates were between 26% and 50% in most counties."[17]

The California Society of Addiction Medicine has noted that a one-third completion rate is also comparable to treatment compliance with other chronic conditions, including diabetes and hypertension. UCLA's analysis shows the statewide Prop. 36 completion rate compares favorably with the outcomes of other groups, both those who enter treatment voluntarily (30 percent) and those were otherwise ordered to treatment by criminal justice (37 percent).[18]

[14] UCLA, April 13, 2007, p.12.
[15] UCLA, April 13, 2007, pp. 3, 12, 22-23, 42-43.
[16] LHC 2003, p. 31.
[17] UCLA, July 22, 2005, pg. 39.
[18] UCLA, April 13, 2007, p.39.

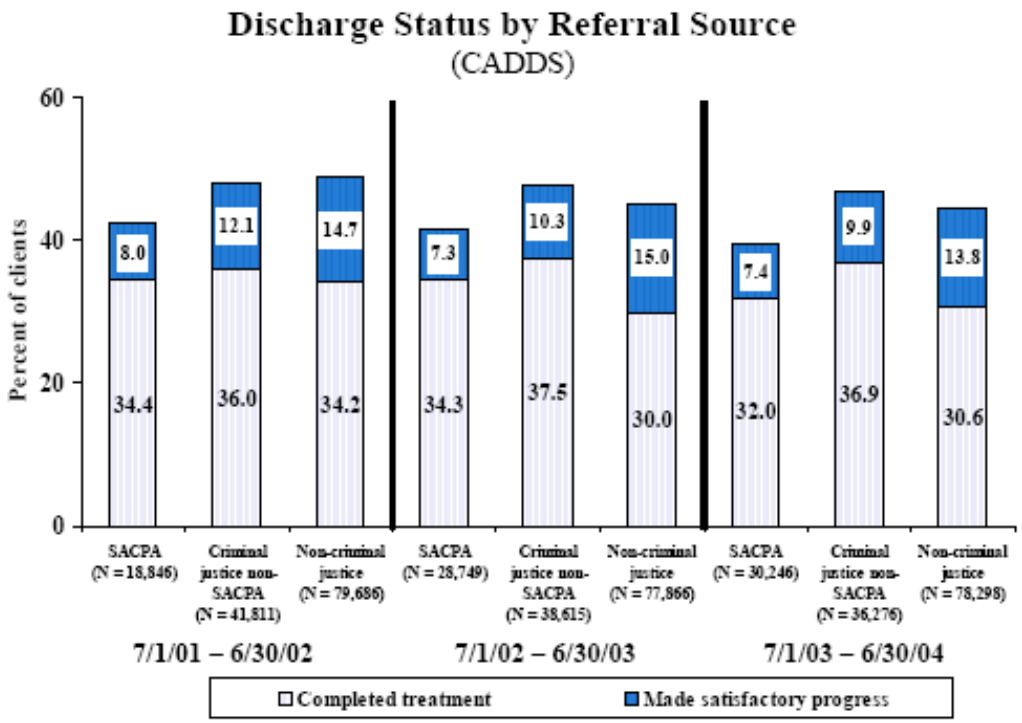

Figure 1: "SACPA's adjusted completion rates in all three years were somewhat lower than the adjusted rates for non-SACPA criminal justice clients and slightly higher than the adjusted rate for non-criminal justice clients. Figure [1] also shows clients who did not complete treatment but were making satisfactory progress."[19]

Annualized figures from state reports on the drug court system suggest that only about 2,700-3,000 adult felons enter drug courts each year in California. The state, however, convicts over 60,000 drug offenders annually. Thus, drug courts offer a chance for treatment for only a very small percentage of drug offenders who warrant such treatment.

Drug Policy Alliance, Proposition 36: Improving Lives, Delivering Results: A Review of the First Four Years of California's Substance Abuse and Crime Prevention Act of 2000*, March 2006, p. 19.*

It is significant that Prop. 36 outcomes are comparable to programs that use much more restrictive—and often subjective—criteria to determine treatment eligibility. In drug courts, for instance, prosecutors and judges typically screen potential applicants for suitability based on an offender's perceived motivation to persevere with treatment or "willingness to change." It is reasonable to surmise that compared with other programs, Prop. 36 has a greater percentage of clients who are less motivated to engage in and complete treatment, but who nevertheless are touched by and become committed to the recovery process.

Second, UCLA has documented in great detail the fact that Prop. 36 clients are receiving *less* treatment than was typically provided by other criminal justice referrals before the law took effect.[20] Specifically, Prop. 36 clients are more likely than clients in other programs to be placed in a less intensive treatment modality than they are assessed as

[19] UCLA, July 22, 2005, p. 39.
[20] UCLA, April 13, 2007, pp.129-132.

needing. As a result, per-client treatment expenditures are substantially lower for Prop. 36 clients (true in 29 of 30 categories of drug users broken out by UCLA).[21]

Indeed, one-quarter to one-third of all Prop. 36 clients who enter treatment are not provided 90 days in treatment—the "minimum standard dose" considered necessary to experience quality of life improvements, including reduced drug use, reduced recidivism and increased employment.[22]

In sum, given that Prop. 36 eligibility requirements are much less discriminatory than those of other treatment diversion programs, and given that Prop. 36 clients are afforded fewer resources to succeed than their counterparts in those other programs, it is rather remarkable that Prop. 36 success rates have kept pace with those of other programs. According to UCLA's 2005 report, "Overall, 39.4% of SACPA's third year clients either completed treatment or made satisfactory progress."[23]

Graduates succeeding. In just six years, more than 70,000 people have graduated from Prop. 36 treatment. When they complete treatment, participants are less likely to use drugs, more likely to be employed and less likely to be re-arrested.

UCLA reports a 71 percent drop in drug use among Prop. 36 completers, and a 60 percent drop among people who received any Prop. 36 treatment. Data also show almost twice as many Prop. 36 clients were employed after completing treatment than were prior to treatment.[24]

UCLA's latest report, released in April 2007, found that among those Prop. 36 participants who re-offended after treatment, their offenses were almost always drug-related, rather than more serious crimes. Controlling for "days on the street," UCLA found: "offenders in the [Prop. 36]-era group had fewer re-arrests during un-incarcerated time than offenders in the pre-[Prop. 36]-era group."[25] Unsurprisingly, drug arrests were lowest among those who completed treatment.[26] But there was an undeniable positive effect for tens of thousands of people who participated in Prop. 36 programs.

"I know that if it wasn't for Prop. 36 I would either be in jail or dead right now. Prop. 36 has allowed me to become a parent again, a daughter, a sister, an aunt, a cousin, a neighbor." - Tammy, Sacramento, 44

Tammy struggled with a heroin and methamphetamine addiction for most of her life, starting at the age of 14. Two separate prison terms for drug possession didn't stop her drug abuse. As a result of Prop. 36, Tammy has celebrated many years of sobriety.

Unfortunately, the unquantifiable human factor of Prop. 36 is often overlooked. The voices of Prop. 36 participants and graduates must be a central part of any discussion about the future of the program. Prop. 36 stories are the stories of people who have been marginalized but who have seized the unique opportunity afforded by Prop. 36 to get well

[21] UCLA, April 13, 2007, p. 131.
[22] UCLA, April 13, 2007, p. 132. The number for all users is 27.5%.
[23] UCLA, July 22, 2005, p. 39.
[24] UCLA, July 22, 2005, p. 66.
[25] UCLA, April 13, 2007, p. 65.
[26] UCLA, April 13, 2007, p. 66.

and commit to recovery. They have restored families, returned to gainful employment and earned academic degrees ranging from GED to PhD.

In its brief history, Prop. 36 has generated 47,000 such stories of redemption and recovery. Few other state-based social programs can make such claims.

Restored families. According to UCLA researchers who testified at the March 14, 2007 hearing of the Assembly Budget Subcommittee on Health and Human Services, in just the first year of the program, Prop. 36-eligible offenders were parents to over 70,000 children under age 18.[27] In six years, the number of affected children is certainly in the hundreds of thousands. Although this data on children's well-being has not been evaluated by UCLA, interview results suggest that thousands of Prop. 36 graduates have reunited with their children. Setting aside the most-important, but difficult to quantify aspects of family reunification, it is likely that Prop. 36 has saved taxpayers vast sums that would otherwise be needed to fund foster care placements. (In 2005, California spent $1.7 billion on foster care, or an annual average of $22,000 per child in the system.[28] Costs per child range from $5,000 to over $100,000 per year depending on the type of placement.[29])

Cost savings. In March 2006, UCLA delivered a report on the cost savings of Prop. 36 which showed that for every $1 invested in Prop. 36, the state saves $2.50. For those who complete the program, savings increase to $4 for every $1 invested. Average savings per program participant, regardless of whether that individual completed the program, is $2,861 over a thirty-month post-conviction period.[30]

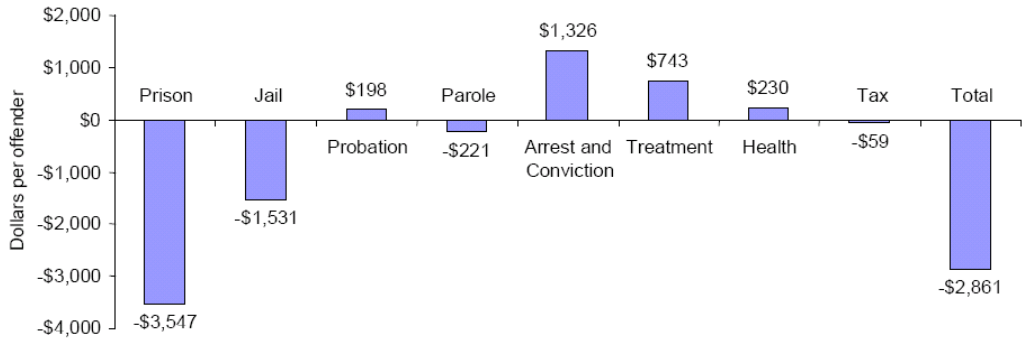

Figure 2: "SACPA difference in difference [DID] costs over all areas examined. The zero line can be interpreted as cost neutral. Any bar above the line represents a cost increase and any bar below the line represents a cost savings. There was a total DID cost savings of $2,861 per offender under SACPA over the 30month follow up period, resulting in a total cost savings to government of $173.3 million."[31]

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[27] Testimony of UCLA researcher Dr. Angela Hawken, at the hearing of the Assembly Budget Subcommittee on Health and Human Services, March 14, 2007.
[28] Legislative Analysts Office, *LAO 2005 Budget Analysis: Foster Care*, February 2005, http://www.lao.ca.gov/analysis_2005/Health_ss/hss_16_Foster_Care_anl05.htm.
[29] Little Hoover Commission, *Still in Our Hands: A Review of Efforts to Reform Foster Care in California*, February, 2003.
[30] UCLA, April 13, 2007, p. 94.
[31] University of California Los Angeles, Integrated Substance Abuse Programs, *SACPA Cost Analysis Report (First and Second Years)*, March 13, 2006, p. 15.

UCLA put savings at $173 million for Prop. 36's start-up year (July 2001 - June 2002). The Legislative Analyst's Office has independently estimated that Prop. 36 resulted in net savings of $205 million in 2002-03 and $297 million in 2004-05. Conservatively estimating $200 million in savings per year, total program savings in six years surpasses $1.2 billion. Savings on incarceration construction bring this total to close to $1.8 billion (see below).[32]

UCLA's study stands apart from every previous study on the cost-benefits of addiction treatment, because it proves, with hard data on tens of thousands of real individuals, the actual budgetary benefit of providing treatment rather than conventional criminal justice processing.

To be sure, other studies have shown a return of up to $7 for every $1 invested in treatment. But these other studies incorporated hard-to-capture returns such as "quality of life improvements." UCLA's study, by contrast, which found $2.50 saved for every $1 invested in Prop. 36, measured only actual dollars spent and saved—on incarceration, court costs, health care, treatment, new taxes—by the program, and its administrators and participants.

Reduced incarceration. Most cost savings result from reduced incarceration. In its 2003 report, the Commission noted that it cost the state of California $28,500 to incarcerate one person per year.[33] According to the Legislative Analyst's Office, that figure now exceeds $43,000.[34] In stark comparison, per-person Prop. 36 treatment costs average $3,300.[35]

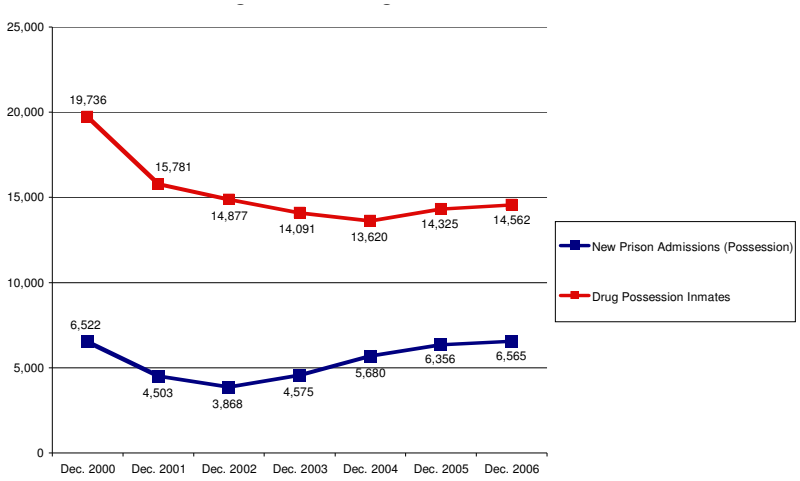

Figure 3: Prop. 36 reduced the inflow into prisons and the number of inmates serving time for drug possession.[36]

[32] The Legislative Analyst's Office estimated, in the official voter guide for the November 2000 election (pg. 25), that Prop. 36 would limit the growth of the prison inmate population, meaning "the state would also be able to delay the construction of additional prison beds for a one-time avoidance of capital outlay costs of between $450 million and $550 million." Because there was a demonstrable reduction in the number of new prison inmates entering for drug possession, DPA uses the midpoint of the LAO projection ($500 million) as the capital savings provided by the measure to date.
[33] Little Hoover Commission, March 2003, p. 50.
[34] Elizabeth G. Hill, "California's Criminal Justice System, A Primer," Legislative Analyst's Office, January 2007, p. 66.
[35] Drug Policy Alliance, March 2006, p. 14.
[36] Drug Policy Alliance, March 2006, p. 9, based on data from California Department of Corrections and Rehabilitation, Data Analysis Unit, "Prison Census Data," June 2000-June 2005.

Thanks to Prop. 36 diversion to community-based treatment, the number of people incarcerated in prison for drug possession *fell* by 32 percent (or 6,279 people) during the first five years of Prop. 36.[37] Given that a high percentage of women behind bars are there for drug offenses, it is not surprising that the measure would have an even greater impact on women: Prop. 36 reduced the number of women incarcerated in prison for simple drug possession by 46 percent in 2000-2004, from a peak of 2,533 in 2000. Though the number rose slightly in 2005, it is still 40 percent down from 2000.[38]

By diverting so many men and women from prison to treatment, Prop. 36 rendered unnecessary the construction of a new men's prison (saving an additional $500 million) and also resulted in the shuttering of the Northern California Women's Facility. This brings total savings to nearly $1.8 billion.

In February 2003, the Northern California Women's Facility was closed, largely due to the reduction in female inmates caused by SACPA. Margot Bach, a spokeswoman for the California Department of Corrections, said, "There are a lot of reasons the population is down … but we think the biggest factor with the women's numbers is Proposition 36."
Mark Martin, "CRIME: Changing Population Behind Bars," San Francisco Chronicle*, April 21, 2002, Sunday, http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2002/04/21/MN233500.DTL (accessed June 8, 2007).*

The reduction in the prison population brought about by Prop. 36 is striking for two reasons. First, the number of prison inmates serving time for drug possession grew steadily for more than a dozen years before Prop. 36 was passed, quadrupling from about 5,000 to over 20,000 in June 2000.[39] Only after voters approved Prop. 36 did this trend reverse.

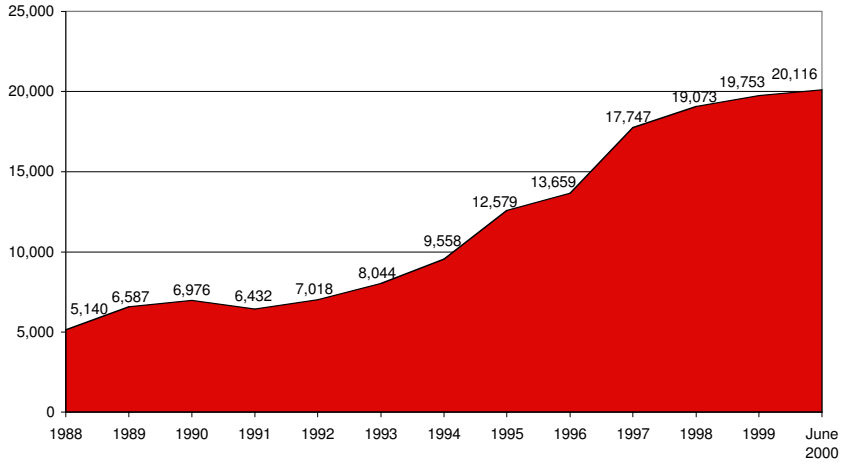

Figure 4: California quadrupled the number of people in prison for drug possession between 1988 and 2000.[40]

[37] Drug Policy Alliance, March 2006, p. 9.
[38] Based on data from the California Department of Corrections and Rehabilitation, "California Prisoners and Parolees", 2000-2005 online at http://www.cdc.state.ca.us/ReportsResearch/OffenderInfoServices/OffenderInformation.html.
[39] Drug Policy Alliance, March 2006, p. 9.
[40] California Department of Corrections and Rehabilitation, Data Analysis Unit, "Prison Census Data," June 2000-June 2005.

Second, Prop. 36 reduced both the number of drug possession inmates and the annual influx of new inmates at a time when the number of drug law convictions *increased* by a quarter.[41] This means the law did not merely divert a static flow, but rather a *larger* flow of drug-possession cases, forestalling what might well have been a substantial increase in the number of state inmates serving time for possession – during a time when the state's prison and jail systems were crumbling under pressures of extreme overcrowding and an inability to provide inmates with adequate medical and health care services.

Many of California's jails are acutely overcrowded, understaffed, severely lacking in basic (much less critical) health care services, and are awash in violence, illicit drugs, and non-sterile drug injecting equipment. In short, they act as incubators for transmission of severe infectious diseases such as tuberculosis and HIV.

Absent Prop. 36, it is apparent that California would have reached the crisis point in its prison population problem even more quickly than it did. Not only did Prop. 36 help slow crowding in the state's prisons and jails, it kept people who are not a threat to public safety from the harms of incarceration in California.

In sum, at the most basic level, Prop. 36 delivered on its promises. It dramatically expanded funding and opportunities for treatment, it helped tens of thousands of people to recover from addiction, it restored tens of thousands of families, it dramatically reduced incarceration, and it saved hundreds of millions of dollars.

Growth of State's Treatment Infrastructure. Prop. 36 has prompted the growth and increasing professionalization of California's treatment infrastructure. In an effort to promote quality assurance within the treatment field, Prop. 36 mandates state licensing and review of all treatment programs that provide substance abuse services to Prop. 36 clients. With the infusion of funding that Prop. 36 brought, the state's treatment community were able to double their capacity and maintain, if not improve, the quality of their services after the law was enacted. The expansion of drug treatment services and the establishment of important new programs are two of the many little-mentioned albeit important stories of how Prop. 36 has benefited the state.

The law also catapulted treatment professionals to center stage and challenged them to provide individualized treatment services in each of California's 58 counties. Despite many obstacles, the treatment community answered the call and largely rose to the challenge. The state's treatment professionals deserve our thanks and appreciation for the many successes they have helped people to achieve.

III. Improving Prop. 36 Implementation

Despite its impressive achievements, Prop. 36 has been handicapped over the last six years by the same problems that have long plagued the provision of treatment in California. In 2003, the Commission recognized these structural failings: a shortage of funding and a disconnect between evidence and policy, particularly a lack of integration of departments and services, and a poor system-wide understanding by many criminal

[41] California Department of Corrections, "Prison Census Data," Annual Reports, 1988-2000.

justice actors that addiction is a chronic, relapsing condition that typically requires several exposures to treatment.

Moving forward, Prop. 36 could be expanded so that more people who do not pose a threat to public safety and who need addiction treatment can receive treatment in the community.

Provide adequate funding for adequate treatment. In the first year of Prop. 36, when treatment funding in the state was doubled, the Commission noted that overall treatment funding for the state was still painfully inadequate—with disastrous consequences:

"In 2001, the State provided substance abuse treatment for 359,000 people, a significant expansion over the 130,000 treated in 1997. Although the treatment system expanded greatly with the infusion of Proposition 36 funding, it is still insufficient to provide treatment for all Californians seeking it. In December, 2001, nearly 11,000 people were on waiting lists for treatment. Thousands more have walked away when they were turned away and tens of thousands need treatment, but have not sought it."[42]

Since the law's inception, the law's funding has not kept pace with counties' needs, threatening the provision of adequate treatment to participants. The ballot measure set aside $120 million in funding for Prop. 36 treatment per year for five years. This was estimated by the Legislative Analyst's Office to be enough for about $3,000-$3,500 per client for treatment and supervision.

Counties have increased their Prop. 36 spending over time, from $120 million in 2001 to $145 million in 2006/07. But treatment costs have come to exceed treatment funding levels. Using statistical methods employed by the Department of Finance to adjust for inflation, $120 million in 2000 dollars is equivalent to $152.4 million today. So, although Prop. 36 spending rose slightly over the years, the real value of Prop. 36 funding has fallen.

In April 2007, researchers at UCLA announced that Prop. 36 needs at least $228.6 million just to reach a minimum level of adequacy.[43] This proposed amount would improve treatment outcomes and increase taxpayer savings. In their report, the UCLA researchers admit that that the *optimal* funding level for Prop. 36 is still higher, noting "Many potential program enhancements are excluded here, for example, the cost of increasing length of stay in long-term residential treatment, providing ancillary services, or aftercare, all of which have been shown to improve drug treatment outcomes."[44]

Prop. 36 funding shortfalls yield demonstrable negative consequences: chiefly, clients are placed in treatment that is neither sufficiently intensive nor sufficiently lengthy for their assessed needs. As UCLA researchers explained, due to insufficient resources, counties make treatment placement and duration decisions based on cost rather than propriety. This is evidenced by the fact that, despite a large proportion of severely addicted Prop. 36 participants, the vast majority (85 percent) of clients are placed in outpatient drug-free programs, and only ten percent are able to enroll in more intensive—and expensive—

[42] Little Hoover Commission, March 2003, p. 43.
[43] UCLA, April 13, 2007, p.134.
[44] UCLA, April 13, 2007, p. 134.

inpatient programs.[45] In addition, counties are shortening Prop. 36 treatment requirements, such that treatment duration for the program lags behind that of other criminal justice-linked treatment programs that predate it.

Increasing Prop. 36 funding so that counties can place clients in appropriate treatment programs for appropriate lengths of time and under appropriate supervision is the single most important thing that can be done to help the law live up to its full promise.

In 2006, the Legislature created a new Prop. 36 supplemental funding stream, known as the Substance Abuse Offender Treatment Program (OTP) and placed $25 million in the account (another $120 million went to the main account). All OTP funds are reserved for Prop. 36 clients, so it is not truly a separate program, but it requires county-matching funds and a separately prepared and submitted application. This bureaucratic funding stream, although purportedly designed to foster implementation of best practices, amounts to more hidden budget cuts, since some counties cannot or will not match funds.

It is disheartening that, despite the proven effectiveness of treatment and the expertly calculated cost savings of Prop. 36, the program is starved for funds.

Expand access to narcotic replacement therapy. Methadone is the gold-standard treatment for opioid dependence. It is the most studied drug in the entire pharmacopoeia and, when used properly, yields the best treatment outcomes of any known treatment modality. A more evidence-based drug treatment could not be. This is why Prop. 36 expressly provides for narcotic replacement therapy, such as methadone and buprenorphine.

According to UCLA, however, "methadone maintenance, methadone detox, non-methadone detox, and short-term residential treatment were rarely used in SACPA."[46] In fact, only about ten to fifteen percent of Prop. 36 participants who present with opioid dependence issues receive methadone treatment.[47]

Although much attention has been paid to Prop. 36 completion rates, none of Prop. 36's detractors have drawn the connection between low completion rates for heroin users in Prop. 36 and the failure of many counties to provide adequate—or any—access to methadone. To boost Prop. 36 completion rates, there must be a real commitment by counties to making quality narcotic replacement therapy available to all persons in Prop. 36 who would benefit from it.

Recent history suggests that counties will not expand access to methadone absent a clear and enforceable mandate from the state. Statewide regulations may be needed to ensure the appropriate assessment and treatment of opioid-addicted offenders. The state should use its power of the purse to reward counties that expand the use of NRT and to punish counties that fail to do so. Improving treatment outcomes under Prop. 36 cannot be divorced from improving access to and quality of narcotic replacement therapy.

Close the structural gap between court and treatment. Inadequate funding for probation supervision for Prop. 36 participants is another weakness in the law's

[45] UCLA, 2002 Report p. 42.
[46] UCLA, April 13, 2007, pp. 3-6, 35.
[47] UCLA, April 13, 2007, p.35.

implementation. Only some probation officers have the capacity to actively steer their Prop. 36 probationers through myriad appointments between court and treatment enrollment and completion. This capacity is shrinking along with funding levels.

As a result, people are falling between bureaucratic cracks in their journeys from court to addiction assessment to probation orientation and then to treatment. The court-to-treatment disconnect results in treatment "no shows," individuals who choose Prop. 36 drug treatment but who fail to begin such treatment with a county-contracted provider.

Despite the outsized attention it receives, current data on the issue of "no shows" fails to distinguish between a wide range of circumstances. For example, "late refusers" have been miscounted as "no shows," which leads to a falsely higher number. By definition, a "no show" is a person who has not even tried treatment; "no shows" are not Prop. 36 failures so much as they are Prop. 36 non-starters.

The underlying question is thus, what are the barriers, systemic- or personally-derived, to Prop. 36 participation?

With as little as a phone call, many potential clients could be located and reclaimed for treatment before they lose their Prop. 36 rights and face incarceration. Outreach teams of case managers, who are typically cheaper to field than probation officers, and whose efforts cost less than incarceration, could be formed to more aggressively seek out and guide to treatment "missing" offenders. The state should identify and promulgate best practices in this area so that systematic outreach to "no shows" can be undertaken.

Provide training to partners in law enforcement and criminal justice. When voters approved Prop. 36 in 2000, criminal justice was blindsided. Californians had suddenly asked all of those working in criminal justice—not just the self-identified few who had been working in drug courts—to adopt a primarily public health approach to drug addiction. The law changed overnight, but punitive "drug war" perspectives were slow to follow.

Training on the medical model of addiction, from physician and research specialists, could do much to educate the perspectives of those who, under Prop. 36, mete out treatment and penalties to people suffering from addiction, as well as support better and more aligned collaboration efforts at the county level. The state should contract medical specialists (for example, the California Society of Addiction Medicine) to provide ongoing addiction and treatment education and trainings to Prop. 36 partners in law enforcement and criminal justice.

While Prop. 36 requires daily collaboration and cooperation across a range of county agencies and stakeholders charged with drug prevention, treatment and control, battles continue to be waged between those who believe that more punitive responses are required to address addiction (notwithstanding the failure of this approach), and those who adhere to the vision of Prop. 36 and fight for greater investments in and commitment to quality treatment.

Expand access to Prop. 36 treatment. Over 36,000 people annually access treatment through Prop. 36. However, this number could—and should—be larger. Several suggestions are offered above about how to improve treatment access, retention and completion.

Still another way to move a high-cost offender population into low-cost treatment would be to expand, even slightly, the eligibility criteria for Prop. 36. At present, only first- and second-time nonviolent low-level drug offenders (usually for simple possession, under the influence or paraphernalia), who have not been convicted of a violent offense in the previous five years are eligible for Prop. 36 treatment. They can be disqualified for any concurrent offense, whether petty-theft or littering.

Modifying or lifting a few of these restrictions on eligibility and/or expanding judicial discretion to place and/or retain people in Prop. 36 treatment who are not presently eligible, could dramatically expand the reach of Prop. 36 services. While expanded treatment eligibility must be accompanied by commensurate increases in treatment funding, substantial gains would almost certainly result, in the form of improved public health, public safety and even more taxpayer savings.

IV. The Road Ahead: Rethinking Criminal Penalties

Prop. 36 has tried to make the best of a bad system for dealing with drug offenders. When the law was approved in 2000, voters did not then want to decriminalize drug use, but they did not want people to be imprisoned for using drugs, either. Prop. 36 offers help to those who wind up in court and pose no threat to public safety, but maintains the criminal laws as they were.

Still, the question can never be far from the mind of anyone studying the problem: Does it make sense to use the criminal justice system to punish *or* treat those dependent on or addicted to controlled substances? And even if simple possession is to remain a crime, must it be a felony in most cases, with possible prison time attached?

Obviously, this is not the approach we take to users of alcohol or tobacco, for a host of historical reasons. So which is the wiser course?

A change in the criminal classification of drug possession, from a felony to a misdemeanor, could be an appropriate middle ground between ending the prohibition on possession and continuing with a system that results in the imprisonment of thousands of people for nonviolent behavior. (Misdemeanor status would preclude prison but permit jail as a punishment in appropriate cases.)

There are two practical objections to scaling back the penalty for possession to a misdemeanor. First, some worry that individuals' commitment to treatment might be negatively impacted. Without the "stick" of jail or prison time, would fewer people who do come to treatment feel compelled to complete it?

This objection probably overestimates the value of criminal justice coercion in facilitating treatment success. People suffering from addiction face a lot of consequences—divorce, loss of employment, social isolation, and worse—beyond criminal sanctions. Comparing Prop. 36 today to treatment success among non-legally-coerced clients, the felony status of drug possession appears to boost completion rates by a mere three to five percentage points, all other factors being equal. Is that worth the cost of arresting and criminally processing 65,000-100,000 people per year?

The other objection would be that fewer people will enter treatment if the laws against drug possession are relaxed. This may or may not be true. Again, it is easy to

overestimate the importance of criminal laws. People seek treatment for many reasons, and people suffering from addiction get arrested for many things besides drug use. In any event, we should not lose sight of the fact that the criminalization of drug possession already serves as a stigmatizing barrier to treatment entry. Relaxing criminal penalties may well enhance the motivation of persons with drug problems—and the people who care about them—to seek treatment.

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